MV 00-2
Tax Type: Motor Vehicle Tax
Issue: Private Vehicle Use Tax – Business Reorg/Family Sale

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINSITRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	Docket No.
v.	)	
JOHN and JANE DOE,	)	John E. White,
Taxpayers.	)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: JOHN DOE appeared for taxpayers; Shepard Smith appeared for the Illinois Department of Revenue.

Synopsis:

After JOHN DOE and his wife JANE ("the DOEs" or "taxpayers") were given a car from out-of-state relatives, they filed a Vehicle Use Tax ("VUT") return and paid tax in the amount of $215. Thereafter, they filed an amended return to claim credit in the amount of $200, after determining that their acquisition was amenable to an exception to the scheduled tax rate for transfers of vehicles between family members. The Department denied the DOEs' claim, following which they protested that denial, and asked for a hearing. The Department later issued a Notice of Tax Liability to assess more tax regarding the DOEs' acquisition and use of the vehicle at issue.

By the time of the pre-hearing conference, the Department abandoned its claim that further tax be assessed against the DOEs, and the parties agreed that the issue to be resolved is whether taxpayer is entitled to a $200 refund of tax paid. After considering the exhibits and testimony offered at hearing, I recommend the issue be resolved for taxpayers, and that their claim be granted.

<u>Findings of Fact:</u>

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission of the Notice of Denial, under the certificate of the Director. Department Ex. 1.

2. On 4/3/99, DOE and his wife filed and signed an Illinois Vehicle Use Tax Transaction Return regarding their acquisition of a 1996 Acura automobile bearing a vehicle identification number (VIN) of XXXX. Joint Ex. 1, p. 10.[1] On that return, the DOE's named CAR OWNER as the seller, even though the vehicle was not sold, but given, to them. *Id*. (the form describes any transferee as the "seller"); *see also id*., p. 9 (certificate signed by CAR OWNER).

3. On 12/1/99, the DOEs filed an amended return on which they indicated that their acquisition of the vehicle "… qualified for one of the $15 exceptions because [one of them was] … the spouse, parent, brother, sister, or child of the seller or transferrer." [*sic*] Joint Ex. 1, p. 11.

4. Before the DOEs acquired the Acura, it was leased to DOE's brother, RON DOE ("RON"), and CAR OWNER ("OWNER"), who is RON's wife and JOHN's sister-in-law. Joint Ex. 1, pp. 1, 14-15, Hearing Transcript ("Tr.") pp. 14 (JOHN), 21 (argument by Department acknowledging relationship between JOHN and OWNER). RON and OWNER leased the car from American Honda Finance. Joint Ex. 1, p. 4.

[1] The page numbers were hand written by the alj on the lower right hand corner of each exhibit page, for administrative convenience.

5. At the end of 1998, RON and OWNER ascertained the pay off amount for their Acura, and approximately a week or two later, RON signed a check drawn on his and OWNER'S joint account in the payoff amount, made payable to the order of their bank. Joint Ex. 1, pp. 1-2. Thereafter, the bank drew a cashier's check in the pay-off amount, payable to American Honda, which OWNER then brought to the owner/lessor's office. *Id*., pp., 3-4, 7; *see also* Taxpayer Ex. 1, p. 3.

6. OWNER was the only person who went to the lessor's office to tender the payoff amount, and she signed certain documents which led to the eventuality that her name, and her name only, was listed as the titleholder of the Acura following transfer of title from American Honda. Joint Ex. 1, pp. 5 (reverse side (assignment page) of Connecticut certificate of title), 6 (odometer disclosure statement signed by OWNER), 15 (RON's affidavit). She then signed a writing indicating that the Acura was being given as a gift to JOHN and JANE (*see* Joint Ex. 1, pp. 5, 9), and presumably, assigned the Connecticut title to the DOEs. *See id*., pp. 4-6, 10.[2]

7. After their receipt of the Acura, the DOEs completed and filed the original VUT return as part of the process of having the car titled in Illinois. Joint Ex. 1, p. 10; *see also*, 625 **ILCS** 5/3-104.

8. JOHN signed his wife's name on the original return. *Compare* Joint Ex. 1, p. 10 (co-owner's signature line of original return) *with id*., p. 12 (co-owner's signature line of amended return); *see also* 1601 South Michigan Partners v. Measuron, 271 Ill. App. 3d

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[2] It may be inferred that the reason for the three month delay from the time the Acura was delivered to the DOEs' possession until they filed a return and application for title for the vehicle is that they had to wait until the state of Connecticut processed the assignment of title regarding the American Honda to OWNER transfer for the same vehicle, after which that certificate of title was mailed to the DOEs by either OWNER or RON, or both.

415, 417-18 (1st Dist. 1995) (witness, jury or finder of fact may compare signatures in the record to determine whether they are the same).

9. The DOEs paid $215 in tax when they filed the original return on 4/3/99. Joint Ex. 1, p. 10.

10. On 12/1/99, the DOEs filed an amended return on which they claimed that their acquisition of the 1996 Acura was amenable to the family transfer exception from the regularly scheduled tax rate. Joint Ex. 1, pp. 11-12. JANE signed her own name on that amended return. *Compare* Joint Ex. 1, p. 12 (co-owner's signature line of amended return) *with id*., p. 10 (co-owner's signature line of original return).

11. The Department also issued a Notice of Tax Liability regarding the DOEs' acquisition of the Acura in this case. *See* Pre-Hearing Order (listing NTL number 53-317192 K). However, during a prehearing conference, the Department did not assert that the DOEs owed any additional tax (*see id*.), and no Notice of Tax Liability or Department correction of the DOEs' original VUT return for the Acura was offered into evidence at hearing.

<u>Conclusions of Law:</u>

This matter involves the family transfer exception to the Illinois Vehicle Use Tax's ("VUT") regular tax schedule. The VUT is codified as part of the Illinois Vehicle Code ("the Code") and it imposes a tax on "… the privilege of using, in this State, any motor vehicle as defined in Section 1-146 of this Code acquired by gift, transfer, or purchase …." 625 **ILCS** 5/3-1001. The tax rate is detailed in a schedule set forth in § 3-1001 of the Code, which the DOEs used when calculating the amount of tax due on the return they filed in December, 1999. *Compare* 625 **ILCS** 5/3-1001 (tax due on the donative transfer of a 3 year old car is $215) with

Joint Ex. 1, p. 10 (§ E of the return).

The family exception to the VUT's scheduled tax rate is also set forth in § 3-1001 of the Code, which provides, in pertinent part:

> For the following transactions, the tax rate shall be $15 for each motor vehicle acquired in such transaction:
>
> (i) when the transferee or purchaser is the spouse, mother, father, brother, sister or child of the transferor;
>
> ***
>
> A claim that the transaction is taxable under subparagraph (i) shall be supported by such proof of family relationship as provided by rules of the Department.

625 **ILCS** 5/3-1001.

Notwithstanding the DOEs' argument that no Department regulations existed to guide taxpayers regarding the family exception (*see* Tr. p. 24; Taxpayer Ex. 1, p. 5), the Department promulgated regulations regarding the Code's VUT as early as 1989. 13 Ill. Reg. 14080; 86 Ill. Admin. Code §§ 151.101 – 151.115. At the time the transfer in this matter was made, § 151.105(e) of those regulations provided, in pertinent part:

> A claim that a transaction is taxable under … [the family transfer exception of VUT § 3-1001] must be supported by a certification of family relationship. The certificate must include the transferor's name and address, the transferee's name and address and a statement that describes the family relationship between them.

86 Ill. Admin. Code § 151.105(e).[3] Thus, the "books and records" necessary to prove an exception for one of the statutory family relationships will consist of documents conforming to Department regulation § 151.105(e).

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[3] An amendment to § 151.105(e) that became effective July 28, 2000 provides that the certification must be written by the transferee, and submitted at the time the return is filed. *See* 24 Ill. Reg. 12087 (announcing adoption of amendment to 86 Ill. Admin Code § 151.105(e)). The Department makes no argument that the amended version of § 151.105(e) should be applied to the facts of this case, perhaps because it clearly imposes new obligations not previously imposed upon persons affected by it. Thus, I will consider only the regulation as it existed at the time of the transfer.

The Illinois legislature granted the Department the power to administer and enforce the provisions of the Code's VUT, including the power "to determine all rights to credit memoranda or refunds arising on account of the erroneous payment of tax penalty or interest hereunder." 625 **ILCS** 5/3-1003. It also granted to the Department and to persons subject to the Code's VUT:

> … the same rights, remedies, privileges, immunities, powers and duties, and be subject to the same conditions, restrictions, limitations, penalties and definitions of terms, and employ the same modes of procedure, as are prescribed in the Use Tax Act, as now or hereafter amended, which are not inconsistent with this Article, as fully as if provisions contained in those Sections of the Use Tax Act were set forth in this Article.

625 **ILCS** 5/3-1003.

At hearing, the Department entered into evidence under the certificate of the Director a copy of the Notice of Denial issued to taxpayer in this case. Department Ex. 1. Pursuant to § 20 of the UTA, the Department's denial of a claim for refund is prima facie proof of the correctness of the Department's determination that taxpayer is not entitled to the refund. 35 **ILCS** 105/20. The Department's prima facie case is a rebuttable presumption. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 157, 242 N.E.2d 205, 207 (1968); DuPage Liquor Store, Inc. v. McKibbin, 383 Ill. 276, 279, 48 N.E.2d 926, 927 (1943). A taxpayer cannot overcome the presumption merely by denying the accuracy of the Department's assessment. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833, 527 N.E.2d 1048, 1053 (1st Dist. 1988). Instead, a taxpayer must present evidence that is consistent, probable and closely identified with its books and records, to show that the assessment is not correct. Fillichio v. Department of Revenue, 15 Ill. 2d at 333, 155 N.E.2d at 7; A.R. Barnes & Co., 173 Ill. App. 3d at 833-34, 527 N.E.2d at 1053.

The parties agreed that the only issue in this matter would be whether the DOEs are entitled to the $200 credit claimed. *See* Pre-Hearing Order. In a nutshell, the Department argues that the DOEs are not amenable to the exception because the title trail shows that the vehicle was transferred from OWNER to JOHN, and because OWNER does not share one of the statutory relationships with JOHN. Taxpayers' argument is that all of the evidence shows that the Acura was intended to be a gift from RON to his brother, and that the intent of the parties should control the fact that only OWNER'S name was included on the middle link of the chain of title that began with American Honda and ended with the DOEs.

The DOEs filed their amended return after they learned about the statutory exception from the VUT's tax rate for acquisitions in family transfers. Joint Ex. 1, pp. 11-12; 625 **ILCS** 5/3-1001. When considering that claim, the Department wrote to the DOEs and asked for a signed statement from the previous owner verifying the sale and family relationship. Joint Ex. 1, p. 13 (1/28/00 letter from Department employee Lori Oaks to the DOEs). JOHN appears to have hand written a response to the Department's inquiry on the original letter, and returned the original to the Department. *Id*. (Lori Oaks' signature on page 13 of the Joint Exhibit is impressed into the paper, and is written with an instrument having ink that is a different color shade than the black text of the printing on that letter). Also hand-written on that letter, in blue ink, are the words "In-Law Deny". *Id*.

It is likely, but not specifically clear from the record, that OWNER'S certification, which bears her name and address and the DOEs' names and address, but which does not include a description of any family relationship, was tendered to the Department prior to its 2/28/00 denial of the DOE's amended return/claim for refund. *See* Joint Ex. 1, pp. 9, 13 (OWNER'S statement is dated 1/30/99, which is two days after the Department's 1/28/00 letter to the DOE's asking for such a signed statement). RON's later certification, which is dated after the Department's denial, articulates the family relation missing from OWNER'S earlier statement, and also states that OWNERtransferred title to the Acura, at his "instruct[ion]", to his brother JOHN. *Id*., p. 15. Regardless whether OWNER'S statement was tendered to the Department before its denial of the DOEs' claim here, both her and RON's certifications were introduced into evidence at hearing, by counsel for the Department, as part of a Joint Group Exhibit. Tr. pp. 7-11, 19.

As already indicated, the basis for the Department's denial of the DOEs' claim focuses on the fact that the Acura's title chain goes from OWNER to JOHN. Tr. pp. 22 ("It is clear therefore that the transfer was from sister-in-law to brother in law. This is not a family transfer allowed by the Department's regulation … because the transfer was not between brothers."). Actually, the documents strongly suggest that the chain of title goes from OWNER to both JOHN and JANE. Joint Ex. 1, pp. 9-10 (section A of the original return shows that the transferees were both of the DOEs), 11 (part 1 of the amended return). Neither the Department (who claims that the transfer was from OWNER to JOHN) nor the DOEs (who claim that the transfer was from RON to JOHN) offered into evidence a copy of the Illinois title issued for the Acura. The documents that were introduced, however, show that both JOHN and JANE were listed as co-owners on the original and amended returns filed with the Department. Joint Ex. 1, pp. 10-12. Since an original VUT return is ordinarily made contemporaneously with an application for an Illinois certificate of title for a vehicle to be licensed in Illinois, I will infer that the same names were also included on the DOEs' application for an Illinois title for the Acura. That inference is further corroborated by OWNER'S certification that the Acura was intended to be a gift to both JOHN and JANE. *Id*., p. 9.

That the Acura was intended to be a gift to both JOHN and his wife requires an initial determination whether transfers either to and/or from more than one person — e.g., from A and B jointly to C and D jointly (where A and C are, e.g., brother-sister), or from M and H jointly to C (where C is the natural child of M and the stepchild of H), or from F to D and S jointly (where F is D's father) — would ever qualify for the family exception to the regular tax schedule. One of the guides when interpreting a statute is to avoid any unreasonable or absurd results. Antunes v. Sookhakitch, 146 Ill. 2d 477, 486, 588 N.E.2d 1111, 1115 ("Statutes should be construed as to give them a reasonable meaning and in the most beneficial way to prevent absurdity or hardship."); *see also*, United Legal Foundation v. Department of Revenue, 272 Ill. App. 3d 666, 677, 650 N.E.2d 1064, 1071 (1st Dist. 1995) ("Tax laws … must be given a reasonable construction, without bias or prejudice against either the taxpayer or the State, in order to carry out the intention of the legislature and the long range objective of all tax measures: the accomplishment of good for the social order.") (internal quotation marks omitted).

Given that joint ownership of vehicles is so common (*see* 625 **ILCS** 5/3-107.1 (there is a statutory presumption that certificates of title made out to more than one person creates a joint tenancy with rights of survivorship)), it would be hard to conclude that the General Assembly intended the family exception to apply only to transfers of vehicles where the title chain showed, on both ends of the transaction, individual owners who share one of the specified family relationships. Under such circumstances, applicability of the family exception, many of which (as in this case) involve non-commercial transfers of vehicles, would fortuitously rise or fall depending on whether the transferor and transferee sharing the required relationship each held title to the vehicle in his or her name only. Certainly the Department did not interpret § 3-1001 of the Code in such a manner when it promulgated its regulations regarding that statutory provision. *See* 86 Ill. Admin. Code §§ 151.101-151.115. The potential for arbitrary application of the exception would also frequently occur in the case of vehicles held or taken in the name of the "wrong" spouse. Therefore, I will presume that the Illinois General Assembly intended the family transfer exception to apply to transfers of vehicles having joint owners on either end, or both ends, of a vehicle transfer, so long as one of the referenced family relationships exist between two of the individuals on either end of the transfer.

The DOEs persuasively argue, moreover, that while the title trail in this case shows a transfer from American Honda to OWNER, she only took title to the car in order to effect what both she and her husband wanted done with the car. *See* Joint Ex. 1, pp. 9, 15; Tr. p. 15 (JOHN). While not specifically saying so, the DOEs' claim asks that both OWNER'S and RON's certifications be considered together, to explain why OWNER, JOHN's sister-in-law, prepared a writing which states that *she* was giving the Acura to the DOEs. Joint Ex. 1, p. 9. That approach makes sense, and such a reading of both of the certificates is corroborated by the other documentary evidence admitted as part of the parties' joint exhibit.

For example, the evidence shows that OWNER signed the odometer disclosure statement at or about the time she brought in the cashiers check to the lessor/owner's office. Joint Ex. 1, pp. 2-3, 7. Both she and RON were listed as the Acura's lessees on that document, but she was the only individual available to sign it at American Honda office. *Id*. pp. 1, 3; Tr. pp. 14-15 (JOHN); Taxpayer Ex. 1, p. 3. RON, however, signed the personal check drawn to obtain the cashier's check that OWNER tendered when she went to American Honda's office to pay off their debt on their leased car. Joint Ex. 1, p. 2.

The Department argues that RON's signature on the check is irrelevant because the check was drawn on a joint account. Tr. p. 19. True, either RON or OWNER could have signed the check used for the Acura's payoff amount, but what makes RON's action relevant is that it tends to show a donative intent on *his* part. The other evidence of record clearly identifies the DOEs as the object of his and OWNER'S intent. Shortly after RON signed the check used to obtain a cashier's check to pay off the remaining amount he and OWNER owed for the Acura, they turned it over to a car mover who took it to the DOEs in Illinois. *See* Joint Ex. pp. 1-2, 8. RON certified, moreover, that OWNER prepared her certificate because, when he paid for the Acura, he did so intending that it be given to the DOEs. *See id*., p. 15. JOHN's testimony (Tr. pp. 14-15) and the statements contained in RON's and OWNER'S certifications, read together, are consistent with the DOEs' claim, and that evidence is certainly not so incredible as to be beyond belief.

The real issue, therefore, is whether RON may be deemed an owner of the Acura, even though his name was never included on the title to it. The DOEs contend that RON's intent to give JOHN the Acura should control the fact that only OWNER'S name was included on the assignment page of the Connecticut certificate of title. *See* Taxpayer Ex. 1, p. 5 (*citing* Dan Pilson Auto Center , Inc. v. DeMarco, 156 Ill. App. 3d 617, 509 N.E.2d 159 (4th Dist. 1987)). On this point of law, the DOEs are absolutely correct. While the facts of Dan Pilson Auto Center are not similar to the ones presented here (it was a replevin case), part of the basis for the court's analysis in that case is applicable here. Specifically, the Dan Pilson court stated:

> Under established law in Illinois, it is clear that although the Illinois Vehicle Code requires a transfer of certificate of title to effectuate the sale of a vehicle (Ill. Rev. Stat. 1985, ch. 95½, par. 3-112(a)), it is not necessarily determinative of the passage of ownership. (Country Mutual Insurance Co. v. Aetna Life & Casualty Insurance Co. (1979), 69 Ill. App. 3d 764, 26 Ill. Dec. 207, 387 N.E.2d 1037.) It is the intent of the parties involved, and not such statutory prerequisites which determine ownership. (In the Matter of Robinson (7th Cir.1981), 665 F.2d 166; Country Mutual Insurance Co. v. Aetna Life & Casualty Insurance Co.

> (1979), 69 Ill. App. 3d 764, 26 Ill. Dec. 207, 387 N.E.2d 1037.) Consequently, it is possible that one can own an automobile even though the certificate of title is in the name of another. Country Mutual Insurance Co. v. Aetna Life & Casualty Insurance Co. (1979), 69 Ill. App. 3d 764, 26 Ill. Dec. 207, 387 N.E.2d 1037, quoting State Farm Mutual Automobile Insurance Co. v. Lucas (1977), 50 Ill. App. 3d 894, 898, 8 Ill. Dec. 867, 870, 365 N.E.2d 1329, 1332.

Dan Pilson Auto Center , Inc., 156 Ill. App. 3d at 620-21, 509 N.E.2d at 161. As the multiple cites in the passage quoted above suggest, the rationale used in Dan Pilson is firmly grounded in Illinois law. *See* 625 **ILCS** 5/3-107(c) ("A certificate of title issued by the Secretary of State is prima facie evidence of the facts appearing on it."); Hall v. Country Casualty Ins. Co., 204 Ill. App. 3d 765, 780, 562 N.E.2d 640, 650 (2d Dist. 1990) ("A certificate of title is evidence of title, but it is not conclusive and one can own an automobile though the certificate of title is in the name of another.").

The documents in the record show that RON exercised dominion and control over the vehicle sufficient to conclude that he also owned the Acura during the short period OWNER'S name was the only name listed as the owner of the vehicle on the Connecticut certificate of title. Both RON and OWNER jointly leased the car before it was given to the DOEs. Joint Ex. 1, pp. 1-3. Thus, they shared the identical property interest in the car before they exercised their purchase option under the lease. *See id*., p. 1. Prior to the expiration of that lease, RON signed the check drawn to satisfy the payoff amount. *See* Joint Ex. 1, pp. 1-3, 7. The time period between his signature on that check and the transfer of the car to the DOEs does not suggest that he paid for the car in order to give it to his wife, for her exclusive use. Instead, the record shows that RON took that considerable financial step to ensure that the Acura be given to the DOEs. *Id*., p. 15. While I am not so sure that I agree with the DOEs' argument that OWNER was acting as RON's agent when she signed the documents that led to her being named as the owner of the

Acura on the Connecticut certificate of title (*see* Tr. pp. 22-23), I certainly accept that she signed those documents, and subsequently transferred title to the Acura, because she was acting as one of the vehicle's co-owners, both of whom intended to give the car to family members.

Further, the Department's singular focus on the title documents from OWNER to RON and JANE seems to adopt a "form over substance" posture which itself may obviate the clear intent of the legislature that transfers of vehicles between family members qualify for the $15 tax rate, where, as in this case, a transfer of a vehicle involves co-owners on one or both ends of a transaction. In the recent case of In re Stoeker, 179 F.3d 546 (7th Cir. 1999), *aff'd sub nom*, Raleigh v. Illinois Department of Revenue, 120 S.Ct. 1951 (2000), Justice Posner acknowledged the problems with adopting such a policy in tax cases. There, a retailer of aircraft transferred title to an aircraft to its financing/leasing affiliate in order to effect a sale to another corporation. The taxpayer, an individual officer of the corporate purchaser, protested the Department's issuance of a Notice of Penalty Liability which named him as a responsible officer of the corporation who should be personally liable for the amount of unpaid use tax liability the corporation owed regarding its acquisition of the aircraft. Taxpayer attempted to show he should not be penalized because the corporation was not amenable to use tax since the sale was an isolated sale made by PLI, the financing/leasing affiliate. To that argument, Justice Posner wrote:

> PLI, unlike its affiliate JPA, was not engaged in the regular sale of aircraft at retail (or at wholesale, for that matter). In fact the sale to Chandler [the corporate purchaser] was apparently the first sale of an aircraft that PLI had made. The trustee thus wants us to confine our attention to the transfer of title from PLI to Chandler. But that would be myopic. PLI is the financing arm of JPA, which is a retailer of aircraft. JPA found the plane for Chandler, took title to it from its previous owner, Bezwada, and brought PLI in to finance Chandler's purchase of it. Bezwada was (so far as we can tell) not a retailer. But JPA was and it acted as

> the intermediary in the sale to Chandler, at one point actually holding title, as in the ordinary retail sale where the retailer buys from a supplier and resells to a consumer. The fact that title passed from the retailer to its affiliate before coming to rest with Chandler did not make PLI the real seller. Otherwise transactions would be easily structured to avoid use tax by having an out-of-state retailer transfer title to its nonretailer affiliate for retransfer to the in-state purchaser. The "substance over form" doctrine of tax law, on which see Gregory v. Helvering, 293 U.S. 465, 55 S.Ct. 266, 79 L.Ed. 596 (1935); Segal v. Commissioner, 41 F.3d 1144, 1148 (7th Cir.1994); Yosha v. Commissioner, 861 F.2d 494 (7th Cir.1988); ACM Partnership v. Commissioner, 157 F.3d 231, 246-47 (3d Cir.1998), would presumably allow the state to defeat the bankruptcy trustee's attempt to invoke the "isolated or occasional sale" exemption by recharacterizing the transaction as a sale by JPA to Chandler. Cf. Continental Illinois Leasing Corp. v. Department of Revenue, 108 Ill. App. 3d 583, 64 Ill. Dec. 189, 439 N.E.2d 118 (1982).
>
> But this analysis is incomplete, because there is another and equally good way of playing "substance over form" in this case, and that is to treat the "real" sale as Bezwada to Chandler, with JPA and PLI holding title merely as security for financing the sale. See UCC §§ 1-201(37), 9-102, 810 ILCS 5/1-201(37), 5/9-102; Orix Credit Alliance, Inc. v. Pappas, 946 F.2d 1258 (7th Cir.1991); Tilghman Hardware, Inc. v. Larrimore, 331 Md. 390, 628 A.2d 215 (1993). This particular application of the "substance over form" doctrine, however, is nixed by Illinois law, which expressly treats a transfer of title to a retailer as a sale even if the purpose is merely to grant a security interest. 86 Ill. Admin. Code § 130.1060(a); Illinois Dept. of Revenue Private Letter No. 92-0113, 1992 WL 154376 (Feb. 27, 1992). JPA took title; JPA is a retailer; therefore use tax was due on the subsequent transfer of title by JPA to Chandler.

In re Stoeker, 179 F.3d at 549-50.

Here, the DOEs argue that OWNER held title to the Acura in between the time it was transferred from American Honda to the DOEs only because OWNER was the individual who went to American Honda's office, signed the necessary documents and turned over the cashier's check to pay her and RON's remaining liability for the car. Tr. pp. 14-15 (JOHN); Taxpayer Ex.

1, pp. 3, 5. That argument is both reasonable and supported by the documents both parties admitted as evidence in this matter.

Both OWNER and RON manifested their joint and unequivocal intent to give the Acura to the DOEs. Joint Ex. pp. 2, 9, 15. I cannot conclude that only OWNER owned the Acura for the 7 to 11 day period after she signed the assignment page of the Connecticut certificate of title until the date it was transported to the DOEs. *See* Joint Ex. 1, pp. 5-6, 8; *see also id*. p. 10; Hall v. Country Casualty Ins. Co., 204 Ill. App. 3d 765, 778, 562 N.E.2d 648-49 (a gift of an automobile requires transfer of possession coupled with evidence of present donative intent at time of transfer). Rather, RON's certificate, OWNER'S certificate and the other evidence of record all corroborate the DOEs' claim that OWNER took title to the car only to facilitate the donative transfer of the vehicle from her *and her husband* to the DOEs. *See* Joint Ex. 1, pp. 2, 9, 15; Taxpayer Ex. 1, pp. 3, 5. Treating OWNER as the sole and exclusive owner of the Acura for the short period of time during which she was listed as the owner on the Connecticut certificate of title would be the same as treating PLI as the isolated seller of the aircraft in In re Stoeker — elevating form over substance. The Department persuasively argued against adopting such a posture in that case, and the Seventh Circuit and the United States Supreme Court both agreed. In re Stoeker, 179 F.3d at 549-50, *aff'd*, 120 S.Ct. 1951.

Illinois positive law has long been clear that the person listed as the owner on a certificate of title for a vehicle is only prima facie, and not conclusive, evidence of a vehicle's ownership. *E.g.*, Ill. Rev. Stat. ch. 95½, ¶ 3-107 (1969); American States Ins. Co. v. White, 341 Ill. App. 422, 94 N.E.2d 61 (2d Dist. 1950) (abstract only). Here, the record shows that, substantively, both RON DOE and CAR OWNER, spouses, intended to give and in fact gave their 1996 Acura to both JOHN and JANE DOE, spouses. Even though RON was not listed on the Connecticut certificate of title, the DOEs have produced documentary evidence, which conforms to Department regulation § 151.105(a), to show that both he and OWNER owned the Acura before it was given to the DOEs. *See* Joint Ex. 1. That same documentary evidence shows (*id*., p. 15), and the Department does not dispute, that RON and JOHN are brothers. I conclude, therefore, that the vehicle transfer at issue satisfies the family transfer exception to the VUT's regular tax schedule, and qualifies for the $15 tax rate. 625 **ILCS** 5/3-1001.

Conclusion:

I recommend that the Director reconsider the Department's previous denial of the DOEs' claim, and issue a refund in the amount claimed, plus interest, pursuant to statute.

9/16/00
Date

Administrative Law Judge